trial in which the relevant law has been strictly followed and has therefore lost a chance which was fairly open to him of being acquitted. The cumulative effect of the various errors in the judgment of the lower court was that there has been a failure of justice and in the circumstances of the case the appeal should be allowed and the conviction and sentence on the second amended charge set aside. As nearly four years have lapsed since the commission of the offence, I also did not consider it fair to order a retrial. (*R.* v. *Saunders*[13]). The Public Prosecutor's cross-appeal against sentence was also dismissed and I ordered that the fine of $5,000/- and the penalty of $23,773.50 be repaid to the appellant.

*Appeal allowed; Conviction and sentence set aside.*

Solicitors: *Sidek Zubir Wan Sulaiman & Partners.*

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## CHEONG AH CHEOW v. PUBLIC PROSECUTOR

[A. Cr.J. (Chan J.) March 6, 1985]

[Kuala Lumpur – Federal Territory Criminal Appeal No. 31 of 1984]

*Criminal Law and Procedure – Betting as bookmaker – Sentence – Principles of sentencing – Jurisdiction of Subordinate Court – Betting Ordinance, 1953, ss. 6(3)(a) & 18(3) – Subordinate Courts Act, 1948, s.87 – Criminal Procedure Code (F.M.S. Cap. 6), s.283(1)(c).*

*Betting – Bookmaker – Sentence – Betting Ordinance 1953, ss. 6(3)(a) & 18(3).*

The appellant had admitted to acting as a bookmaker in relation to the Merdeka Football Tournament and pleaded guilty to the offence under section 6(3)(a) of the Betting Ordinance, 1953. He was sentenced to 18 months imprisonment plus a fine of $20,000 in default 12 months imprisonment. The learned magistrate also ordered the forfeiture of the sum of $3,310 found on the appellant when he was arrested. The appeal was against sentence.

**Held:** (1) the magistrate in this case has jurisdiction to award the full punishment authorised by section 6(3) of the Betting Ordinance because section 18(3) of the Betting Ordinance has given jurisdiction in excess of the power laid down by section 87(1) of the Subordinate Courts Act, 1948;

(2) the seriousness of the situation caused by bookmakers in relation to sports in this country needs no emphasis and is well known to everyone. Having regard to the prevalence of such offences in this country, the sentence which the learned magistrate has passed on the appellant is well justified both as a punishment for the appellant and as a warning to others who might be tempted to embark on similar enterprises;

(3) the period of imprisonment in default of paying the fine of $20,000 imposed should be reduced to six months, in accordance with section 283(1)(c) of the Criminal Procedure Code;

(4) the money found on the accused was related to the bets placed and was rightly forfeited.

CRIMINAL APPEAL.

*Manjeet Singh Dhillon* for the appellant.

*Tan Hock Chuan* (Deputy Public Prosecutor) for the respondent.

*Cur. Adv. Vult.*

**Chan J.**: On March 7, 1984 the appellant, Cheong Ah Cheow, appeared at the Magistrates' Court at Kuala Lumpur where he pleaded guilty to the offence of acting as a bookmaker under section 6(3)(a) of the Betting Ordinance 1953. He was sentenced to 18 months' imprisonment plus a fine of $20,000 in default 12 months' imprisonment. The magistrate also ordered the forfeiture of the money that was found on him when he was arrested.

At about 4.40 p.m. on September 30, 1983 a police party, acting on information received, raided a stall at No. 13 Petaling Street. The raiding party was led by Inspector Jalil Darus. Cheong Ah Cheow was at the stall. He was on the telephone at the time and he was seen writing something on a writing pad. Inspector Jalil identified himself as a police officer. He ordered the seizure of all the writing materials that were found in front of Cheong Ah Cheow. A sum of $3,310 which was found in his pocket was also seized by the police. He was arrested and taken to the Jalan Bandar police station.

The seized articles were handed to Inspector Gan Teck Lim who is an expert on gambling. The expert was of the view that entries made on the exhibits that had been seized at the raid were records of bets relating to the 27th Merdeka Football Tournament which was to have been held between September 14 to October 2, 1983. All the entries were found to refer to the match between Korea and Malaysia which had been scheduled to be played on September 14. The total amount of the bets which had been placed on the match amount-

ed to $102,400. He concluded that any person who was found in possession of those exhibits was either a bookmaker or a runner. He said: "I say so because the entries made in those exhibits are records of bets relating to football matches."

The punishment for a first offence under section 6(3) of the Betting Ordinance is a fine which may extend to $20,000 plus imprisonment for two years. Mr. Manjeet Singh for Cheong submitted that by virtue of section 87(1) of the Subordinate Courts Act 1948 the jurisdiction of a magistrate is limited to a fine of $10,000 and five years imprisonment. In the present case, he argued, the magistrate had fined Cheong $20,000 which was $10,000 in excess of his jurisdiction. Furthermore, he said, the magistrate was wrong in imposing an order of twelve months' imprisonment if the fine was not paid. Section 283(1)(c) of the Criminal Procedure Code says that where the sentence for an offence does not exceed two years' imprisonment then the "period for which the court directs the offender to be imprisoned" for failure to pay a fine is to be not more than six months. Since section 6(3) of the Betting Ordinance only carries a maximum term of two years' imprisonment for a first offence, the period of imprisonment for non payment of a fine cannot exceed six months.

Mr. Tan for the Public Prosecutor, however, pointed out that by virtue of section 18(3) of the Betting Ordinance, the case falls within the proviso to section 87(1) of the Subordinate Courts Act. However, he agreed that the period for Cheong to be imprisoned for not paying the fine must not exceed six months.

I agree with Mr. Tan.

Although section 87(1) of the Subordinate Courts Act does limit the jurisdiction of a first-class magistrate to pass a sentence not exceeding –

(a) five years' imprisonment;

(b) a fine of $10,000;

(c) whipping up to twelve strokes; or

(d) any sentence combining any of the sentences aforesaid,

the proviso to the subsection allows the magistrate to exceed that jurisdiction in the following circumstance –

"where, by any law for the time being in force, jurisdiction is given to the court of any Magistrate to award punishment for any offence in excess of the power prescribed by this section, a First Class Magistrate may, notwithstanding anything herein contained, award the full punishment authorized by that law."

By virtue of the proviso, section 18(3) of the Betting Ordinance empowers the magistrate to exceed the limit of the jurisdiction conferred on him by section 87(1). This is what section 18(3) says:

"18(3) Any punishment authorized by this Ordinance may be imposed by a Magistrate's Court, notwithstanding that the same be in excess of the punishment which such Court is ordinarily empowered to impose."

This clearly entitles the magistrate to award the full punishment authorised by section 6(3) of the Betting Ordinance.

In my judgment, I am clearly of the view that the magistrate has jurisdiction to award the full punishment authorised by section 6(3) of the Betting Ordinance. This is because section 18(3) of the Betting Ordinance has given jurisdiction to the magistrate to award the punishment in excess of the power laid down by section 87(1) of the Subordinate Courts Act. Section 18(3) of the Betting Ordinance falls squarely within the proviso to section 87(1) of the Subordinate Courts Act. However, the period for Cheong to be imprisoned in default of paying the fine has to be reduced to six months. To this extent, the appeal is allowed.

Mr. Manjeet Singh has also submitted that the stakes involved were not really as high as $102,400. He thought that the expert was mistaken as to the figures written in Arabic numerals above the Chinese characters as shown in the expert's report. For instance, he said, "I am told that the Chinese characters represent 1100 and not 11000." With respect to Mr. Manjeet Singh, this submission is misplaced. The Chinese words below the numerals only depict the denomination of the currency.

For example:

11000
仟元

The first character means (thousand) and the second character means (money). In English, it means "in denominations of a thousand dollars". Therefore, 11000 written above the Chinese words means $11,000. There was a suggestion that where more than ten thousand dollars are

involved the Chinese characters should signify "in 10,000 dollar denominations". This suggestion is quite unfounded. There is no reason that this must be so. It is up to the individual whether he wants to express himself in this way. Moreover, as was pointed out by Mr. Tan, the appellant had admitted the facts and the exhibits which include the expert's opinion. There is nothing to suggest that the expert had made a mistake with regard to the Chinese characters in the exhibits.

Mr. Manjeet Singh said that the magistrate was impressed by the fact that the total stakes amounted to $102,400. He submitted that if the stakes were in fact not so high then he might have imposed a much lesser sentence or even apply the proviso to section 6(3) of the Betting Ordinance. Here we have the case of a man who has admitted to acting as a bookmaker in relation to the Merdeka Football Tournament. "And one has to read the newspapers to know about the rampancy of the offence" – said Mr. Tan. Only last week, I saw this headline "Big offer by the bookie" in the *New Straits Times* of Saturday, March 2, 1985 –

"The Anti Corruption Agency (ACA) in Ipoh confirmed yesterday a 30 year-old businessman was picked up by them early last month for investigation for attempting to bribe a player in the Malaysia Cup soccer match between the Armed Forces and Trengganu at Lumut.

Perak ACA director S.P. Nainappan said the businessman would be charged in court but declined to say when.

.....

A source said the businessman had offered $5,000 to an Armed Forces player just before the match started at the Lumut Stadium on Feb. 2. Armed Forces lost 1-0."

The seriousness of the situation caused by bookmakers in relation to sports in this country needs no emphasis in this court; it is well known to everyone. We hear and we also read from the newspapers that soccer matches have been "fixed" (I have used the colloquialism intentionally for emphasis) and players have been bribed to throw a game. This was an exceedingly serious offence and, in the view of this court, merited an immediate custodial sentence and a substantial fine. I am of the clear opinion that having regard to the prevalence of such offences in the country, the sentence which the learned magistrate has passed on the appellant is well justified both as a punishment to the appellant and as a warning to others who might be tempted to embark on similar enterprises.

By definition the term "bookmaker" includes a runner and the word "runner" means a person employed by a bookmaker to collect and settle bets, either on salary or on commission: see section 2 of the Betting Ordinance. Mr. Manjeet Singh has argued that if the bets were not so large the magistrate might have been minded to apply the proviso to section 6(3). The proviso reads:

"Provided that if the Court is satisfied that a person convicted of an offence against this sub-section committed the offence as a runner, servant, agent or employee of a bookmaker the court may if it sees fit, without imposing any sentence of imprisonment, impose a fine which shall not be less than five hundred dollars for the first offence, instead of the minimum fine of two thousand dollars, above prescribed."

But the magistrate did not wish to exercise his discretion under the proviso because the amount involved was large. As I have already stressed, bookmaking is a serious crime and because such offences are rife in the country the courts inevitably must take a grave view and impose a deterrent sentence on those who are minded to commit such offences. In the present case, there is nothing at all to show that the appellant was a runner in the sense that he was employed by a bookmaker on salary or on commission. In any case, as long as such offences are rife in the country the discretion of the court under the proviso should only be exercised in rare and exceptional cases; only in cases where the court is able to see that it is a fitting case to be lenient.

In the result, I confirm the sentence that has been passed on the appellant by the magistrate. The magistrate is fully justified in imposing a sentence of 18 months' imprisonment plus a fine of $20,000. However, the period for imprisonment in default of paying the fine is to be reduced from twelve months to six months. As for the forfeiture of the money that was found on the person of Cheong, I am satisfied that, in view of the circumstances in which the money was found and the fact that there were no other articles found on his stall (apart from the materials found near him which related to bookmaking), the money was related to the bets placed on the Merdeka Football Tournament. I confirm the forfeiture of the money.

*Appeal dismissed.*

Solicitors: *Lawrence Dhillon & Assoc.*